

**O'Malley, Harris, Durkin & Perry, P.C.**

**By: Gerald J. Hanchulak**, Attorney I.D. #56320

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Attorneys for Plaintiff, Yurosek Consulting, Inc.

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YUROSEK CONSULTING, INC. : ELECTRONICALLY FILED  
4201 Flint Ridge Drive :  
Bakersfield, CA 93306 : JURY TRIAL DEMANDED

Plaintiff, :

vs. :

MICHAEL CUTLER COMPANY, INC. : NO. \_\_\_\_\_  
1444 East Lackawanna Avenue - Suite 218 :  
Olyphant, PA 18447 :

Defendant. : Assigned Judge: \_\_\_\_\_

**COMPLAINT**

AND NOW, come the Plaintiff, Yurosek Consulting, Inc., by and through its attorneys, O'Malley, Harris, Durkin & Perry, P.C. and files the following Complaint and in support thereof aver as follows:

**PARTIES**

1. The Plaintiff, Yurosek Consulting, Inc., is a California corporation with its principal place of business located at 4201 Flint Ridge Drive, Bakersfield, CA 93306.
2. The Defendant, Michael Cutler Company, Inc., is a Pennsylvania corporation with its principal place of business located at 1444 East Lackawanna Avenue, Suite 218, Olyphant, PA 18447.

**JURISDICTION**

3. The Plaintiff is a foreign corporation incorporated in the State of California.
4. The Defendant is a Pennsylvania corporation.

5. The amount in controversy in this matter exceeds \$75,000.00 and thus fulfils the requirements of 28 U.S.C. §1332(a)(1).

**FACTS**

6. On or about November 10, 2008, Plaintiff and Defendant entered into an independent contractor agreement, a copy of which is attached hereto and incorporated herein as Exhibit "A".

7. Pursuant to the agreement, Yurosek Consulting, Inc. was to provide consulting services to Michael Cutler Company, Inc. in the area of vegetable farming, harvesting, processing, transportation and sales, primarily regarding the commodity of carrots.

8. Pursuant to the agreement, the Plaintiff was to devote its consulting skills to the Defendant's business on a full-time basis.

9. Furthermore, the contract required that Yurosek's consultant relocate from Bakersfield, California to Scranton, Pennsylvania or to Georgia or another place designated by the Defendant. Said consultant was in the process of relocating to Georgia when the breach occurred.

10. The contract included provisions for temporary living expenses.

11. The agreement was for a term of two (2) years, renewable by the Defendant, at the Defendant's option at the end of the two (2) year period.

12. The compensation agreed upon in the agreement was \$175,000.00 per year, payable at \$14,583.33 monthly to be paid on the last Friday of each calendar month by electronic transfer.

13. The agreement also paid for automobile and travel expenses payable to the Plaintiff by the Defendant pursuant to the terms and conditions of the agreement.

14. The only provisions for termination of the agreement were contained in paragraph 9 of the agreement and provided as follows:

- “9. Early Termination: The parties may terminate this Agreement before the end of its set term under Paragraph 5 hereof under the following circumstances:
- a. By MCC: If YCI’s principal, Michael David Yurosek, is convicted for any crime reflecting moral turpitude (arrest will cause unpaid suspension of the relationship, pending final result of conviction or acquittal) or if YCI or its principal engages in immoral or unlawful conduct during the term of the parties’ relationship under this agreement.
  - b. By MCC: If YCI/Consultant, is incapable or refuses to do its job for a period of thirty (30) days.
  - c. By MCC: Upon MCC discontinuing producing and processing carrots, provided that MCC pays the severance pay as required by Section 5 of this Agreement.
    - a. By YCI: If MCC fails or refuses to compensate YCI as required under this agreement and still, after 15 days written notice of its default by YCI to MCC’s President/CEO, fails to make a required delinquent payment. MCC will pay YCI the 6 months severance fee pursuant to section 5 of the Agreement, prorated to the date of the last payment and will reimburse YCI, to the extent reimbursement has not been paid before termination, for all reasonable expenses properly incurred by YCI pursuant to sections 3, 5, 8, 10 and 11 of this agreement.”

15. The agreement was signed and became effective on November 10, 2008.

16. On or about July 30, 2009, the Defendant, Michael Cutler Company, Inc., unilaterally terminated the contract. See Exhibit “B” attached hereto and incorporated herein by reference.

**COUNT I**  
**BREACH OF CONTRACT**

17. Plaintiff incorporates herein by reference paragraph 1 through 16 above as though the same were set forth fully herein and at length.

18. Pursuant to the terms and conditions of the independent contractor agreement early termination was appropriate only in three (3) circumstances, none of which occurred in the present case.

19. The Defendant's unilateral act of terminating the contract with the Plaintiff on July 30, 2009, constitutes a breach of the contract.

20. The Plaintiff has performed all conditions precedent under the contract in accordance with the terms and conditions of the contract.

21. The Defendant's failure to tender the amounts due under the contract constitutes a breach of the contract.

22. As a result of the Defendant's breach, Plaintiff has lost wages under the contract in the amount of \$218,749.95, as well as yet undetermined moving expenses, travel expenses and opportunity costs, as well as delay damages, costs and attorney's fees.

WHEREFORE, Plaintiff demands judgment in its favor in the amount of \$218,749.95 plus yet undetermined moving expenses, travel expenses and opportunity costs, interest, costs, delay damages and attorney's fees.

Respectfully submitted,

O'MALLEY, HARRIS, DURKIN & PERRY, P.C.

By: *s/ Gerald J. Hanchulak*

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